IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE CRIMINAL JURISDICTION

CRIMINAL APPEAL NO.123 OF 2003

1. Dnyaneshwar Sakharam Bhoir,
   Age 28 years. Occ. Service,

2. Chandrakant Sakharam Bhoir,
   Age 33 years, Occ. Service.

3. Sau. Kamalibai Sakharam Bhoir,
   Age 45 years, Occ. Household.

4. Kum. Alka Sakharam Bhoir,
   Age 23 years, Occ. Household.

   All residing at Karavegaon,
   Taluka & District Thane.

...Appellants.

Vs.

The State of Maharashtra.

...Respondent.

Mr. P.R.Arjunwadkar, Advocate for the Appellants.
Mr.K.V.Saste, A.P.P. for the Respondent.

CORAM: B.H.MARLAPALLE &
R.S. MOHITE, JJ.
DATED :12TH FEBRUARY, 2007

ORAL JUDGMENT (PER B.H. MARLAPALLE, J.)

1. This appeal arises from the order of conviction and sentence passed by the learned 3rd Additional Sessions Judge, Thane in Sessions Case No.429 of 1997. All the four accused were put on trial and the Accused No.1 has been convicted and

sentenced for the offence punishable under Sections 302 and 498A of the Indian Penal Code, whereas, the accused Nos. 2 to 4 have been convicted for the offence punishable under Section 498A of the Indian Penal Code. This appeal has been filed by all the four accused who have been convicted and sentenced.

2. Vaishnavi- the daughter of P.W.No.1 Dwarkanath Shankar Patil (Complainant) and a resident of Ghansoli, New Bombay was married to accused No.1 on 5.6.1995. The Accused No.2 is the mother and accused Nos. 3 and 4 are brother and sister respectively of the accused No.1. The accused came from the poor family background and the accused No.1 had hardly studied. At the time of his marriage he was unemployed, whereas, Vaishnavi had studied upto 10th standard and completed beautician course of two years duration and came from a well-off family. Even after his marriage to Vaishnavi, the accused No.1 remained unemployed. On 24.11.1995, the accused No.1 gave a telephonic message in the morning to Hansabai Dwarkanath Patil (P.W.2) and mother of the deceased saying that Vaishnavi had bolted the house from incide and she was not opening the door inspite of several calls given to her. P.W.No.2 therefore, sent her nephew Anil (P.W.No.3) from Ghansoli to Village

Karave, where the accused were staying and when P.W.No.3 Anil reached the house of the accused No.1, he noticed that the accused No.1 and his mother accused No.2 were present outside and the door was bolted from inside. The accused No.1, P.W.No.3-Anil and one Prakash Bhoir broke open the door and entered in the inner room of accused No.1 and found Vaishnavi hanging to the ceiling fan by means of a saree. The saree was cut and Vaishnavi was taken to nearby hospital, where she was declared dead. The dead body was brought back from Suyash Hospital at Nerul to the house of Raghunath Bhoir at Karave Village at about 3.15 p.m. P.W.No.3- Anil lodged A.D. report (Exh.34) with the Police Station at Nerul, in which, it was stated that Vaishnavi had committed suicide. The dead body was sent for post mortem and P.W.No.4 Dr. Nishikant Bhaskar Kulkarni along with Dr. Mrs. Baheti from Thane Civil Hospital conducted autopsy between 7.30 to 8.15p.m. on 24.11.1995. The probable cause of death was recorded as "Asphyxia due to hanging". P.W.No.1 Dwarkanath Patil approached the Nerul Police Station on 25.11.1995 and filed first complaint (Exh.24) which came to be registered as F.I.R. for the offences punishable under Section 302 and 498A read with Section-34 of the Indian Penal Code. The investigation was handed over to Arun

Lahankar. P.W.No.6 Pundalik Raut had arrested the accused No.1, on the same day. From the scene of offence i.e. from the house of accused No.1. Sandow banian, broken glass pieces, bed sheet, saree, blouse and brassier and petticoat were seized, sealed and sent for chemical analysis. P.W.No.7 Dilip Desai-Assistant Chemical Analyser was examined in support of the Chemical Analyser's report at Exh.58. All these articles except the broken glass pieces were found to be stained with human blood of Group "B" though the blood group of the deceased as well as the accused No.1 was not detected. On completion of the investigation, charge sheet came to be filed.

3. The prosecution examined in all seven witnesses and the accused No.1 in support of his plea of alibi examined one witness i.e. Ramesh Goma Bhoir (D.W.No.1). While accepting the post mortem report at Exh.42 read with oral deposition of P.W.No.4-Medical Officer, the Trial Court has held that Vaishnavi died due to homicidal death and the accused No.1 had assaulted her, killed her and thereafter had made a show that Vaishnavi had hanged herself. As per the Trial Court, the accused No.1 committed the crime and thereafter, escaped from his house through the rear window and put up a false

story to inform P.W.No.2, adjoining neighbour as well as his parents that Vaishnavi was not opening the door from inside. By referring to the depositions of P.W.No.1, P.W.No.2 and P.W.No.3 the Trial Court recorded a finding that Vaishnavi was subjected to harassment and cruelty during short span of five months of marriage by accused No.1 as well as other accused. The accused No.1 was demanding money from the father of Vaishnavi so as to get his sister accused No.4 married. On these grounds, the Trial Court has held all the accused guilty for an offence punishable under Section 498A of the Indian Penal Code. The Trial Court has also accepted the prosecution version that accused No.1 was harassing Vaishnavi to meet his demand for money to be given by P.W.No.1.

4. Mr. Arjunwadkar, the learned counsel for the appellants while referring to the post mortem report at Exh.42 pointed out that there was nothing on record to show that Vaishnavi died due to homicidal death. The accused No.1 had taken the plea of alibi and he proved the same through the evidence of D.W.No.1 Ramesh Bhoir a neighbour. As per Mr.Arjunwadkar, the deceased was not apparently happy as her husband- accused No.1 was unemployed, hardly

literate and therefore, she committed suicide. So far as the offence punishable under Section 498A of the Indian Penal Code is concerned, it is pointed out by Mr.Arjunwadkar that the evidence of all the three witnesses i.e. P.W.No.1 to P.W.No.3 is inconsistent, the P.W.No.1 did not make out a specific case proximate to the date of incident regarding the demand of dowry or the husband was causing harassment or beating the deceased. A vague allegation that the accused were demanding money for the marriage of accused No.4 will not be sufficient to bring home the charge punishable under Section-498A of the Indian Penal Code against any of the accused and therefore, all of them deserve to be acquitted from all the charges by setting aside the order of conviction and sentence, urged Mr.Argunwadkar.

5. There is no dispute that after their marriage, on 5.6.1995, the accused No.1 and the deceased started cohabiting as members of the joint family of the accused and after about two months the complainant (P.W.No.1) had hired a separate residential accommodation for the couple and for which the complainant was paying a rent of Rs.400/- p.m. The said hired accommodation was at a distance of 100 to 150-mtrs. away from the family house of

the accused No.1 at Village Karave. The complainant had also set up a beauty parlour for his daughter Vaishnavi at Ghansoli, so that, she could be busy and support the family, more so, when the accused No.1 was unemployed. Vaishnavi used to leave her house around 8.00a.m. to attend to her beauty parlour at Ghansoli through out the day and used to return to the matrimonial home after 8.00p.m. The distance between Ghansoli and Village Karave is claimed to be about 20 to 25 K.M. When P.W.No.3 Anil entered the house of accused No.1 by breaking open the door, admittedly, Vaishnavi was seen in hanging position and they released her from the same and took to Suyash Hospital in Nerul where she was declared dead. The dead body was brought to the house of Raghunath Bhoir in Village Karave. The Inquest panchanama was not drawn even after the A.D. report was lodged by P.W.No.3 Anil, though, the Inquest panchanama at Exh.17 refers to number of articles lying at the place of offence. On the face of these oral and documentary evidence, we are required to examine at the threashhold whether Vaishnavi met a homicidal death or a suicidal death.

6. P.W.No.4 Dr. Kulkarni in his deposition before the Trial Court stated that the following

injuries were noticed by him on the person of Vaishnavi.

1. Ligature mark single. Seen situated over part of the neck at the level of upper border of thyroid cartilage circling neck obliquely, upwards upto the level of mastoid processes of both the sides. No ligature mark over nape of the neck. Ligature mark of 3/4 inch in breadth, brownish bluish in colour parchment like with underlined subcutaneous haemorrhage. No evidence of fracture of laryngeal cartilages, intact. No laceration of neck vessels, Major (carotid) and muscles.

2. Irregular abrasion on hands, paler aspects over the neck heyprothener eminences 4/2 c.m. right, 4/2 c.m. left. The injuries were antemortem. Both the lungs were congested with isolation of blood stain fluid on out section.

. Uterus 7"x4" gravid, length of foetus 6" from head to toe, weight of foetus 110gms. length of cord 9". Gestational age was around 10 weeks.

He also stated that the deceased was pregnant of 10-weeks and Dr. Mrs.Behati was present at the time of post mortem. As per his opinion, the cause of death was "Asphyxia due to hanging". In his cross examination, he stated that Injury No.2 was not possible due to cut by glass and from Injury No.1 he could not firmly say that it could have occurred in the case of suicide by hanging. At the same time, Injury No.1 was not possible due to accident. On the face of this evidence, the Trial Court proceeded to hold that Vaishnavi died due to homicidal death by relying upon the following circumstances namely:

a) The injuries noticed on the palm of the deceased.

b) Blood stains detected of blood Group B on the banian of the accused and the clothes of the deceased which were on her person at the time of the incident as well as the bedsheet.

c) The rear side window of the house of the accused No.1 being left open, when he alongwith P.W.No.3 entered the room.

d) The accused were harassing and beating the deceased. The accused were also demanding money from her father to perform the marriage of accused No.4.

e) The defence of alibi taken by the accused was found to be false.

. We are not persuaded to accept these reasonings of the Trial Court. Expert Medical evidence could not be discarded unless there was a better expert opinion available before the court. The Medical Officer in his probable cause of death as well as final cause of death was clear to depose before the Court that Vaishnavi died due to Asphyxia by hanging. The prosecution could not place before the Trial Court the source of blood that was found on the articles seized from the place of offence including the banian of the accused and in any case the banian of the accused was not seized from his person. Even though, the Chemical Analyser's report clearly stated that all these articles including the bed sheet were stained with human blood of Group-B, the source of blood has remained a mystery and surprisingly the Trial Court failed to examine it, rather it proceeded to accept the prosecution case

that the deceased was assaulted by the accused No.1, done to death and was subsequently hung or shown to be hung. For this conclusion, the Trial Court accepted that after committing crime, the accused No.1 escaped from the window on the rear side of his house. Though, P.W.No.3 Anil stated in his examination-in-chief that when he entered the room of offence after breaking open the door he had seen the window of the rear side without grill and in open condition and it admeasures 21x36 inches. However, in his report at Exh.34 made to the Nerul Police Station dated 24.11.1995, no such statement was set out. On the other hand, the said statement ended by saying that he had no doubt of any one involved in the death of Vaishnavi. The said statement ended by saying that no one could be suspected regarding the death of Vaishnavi. The post mortem report at Exh.42 carried the above stated injuries recorded in Column No.17 and as per the inquest panchanama, the statements of the persons accompanying, the dead body, the cause of death alleged was hanging as recorded by the Medical Officer in the case papers. The prosecution failed to bring any evidence from the deposition of P.W.No.4 that Vaishnavi died a homicidal death. The post mortem notes were not disputed or doubted by the prosecution when this

witness was in the witness box. The injuries on the palm of the deceased did not reach the prosecution case anywhere to record a finding that the deceased was assaulted and done to death by accused No.1. The injuries noted from the person of Vaishnavi have been recorded to be ante mortem by the Medical Officer. The Clothes of Vaishnavi, including under garments and the bedsheet were found to be stained with human blood. It is nobody's case, including P.W.No.3 Anil who saw Vaishnavi in the hanging position at the earliest, that blood was oozing from her mistress or any other upper lings, so as to stain her blouse, saree and petticoat with blood. The inquest panchanama also did not indicate any other bleeding injury on the person of Vaishnavi except her palms. We therefore, hold that the prosecution failed to prove that Vaishnavi died a homicidal death and that she did not die a suicidal death. In our considered view, she died a suicidal death and therefore, the finding of the trail court of homicidal death is unsustainable.

7. The next issue we are required to consider is whether the accused no.1-husband could be convicted and sentenced for the offence punishable under Section-304-B or under Section-306 of the Indian

Penal Code on the backdrop of his own case that Vaishnavi had committed suicide. we as the appellate court have such powers though the accused No.1 husband was not charged and tried for any of these offences and the prosecution tried him for the offences punishable under Section-302 and 498A of the Indian Penal Code before the Trial Court. In this regard, we may usefully refer to a three Judge bench decision in the case of **Balbir Singh Vs. State of Uttar Pradesh (JT. 2004 (4) S.C. 455)** and recently reiterated in the case of **Virendra Kumar Vs. State of Uttar Pradesh (JT. 2007 (2) S.C. 451).** Let us therefore, examine whether the evidence before the Trial Court made out a charge punishable either under Section-304-B or under Section-306 of the Indian Penal Code. We have perused the statement of the accused No.1 recorded under Section-313 of the Code of Criminal Procedure and we have noted that the case for offence punishable under Section-306 of the Indian Penal Code was never put to him, whereas, the question Nos. 4,5,6,7,8, 14,15 and 16 put to the accused No.1 indicated a case punishable even under Section 304-B. However, the evidence adduced before the Trial Court did not meet the requirements for the offence punishable under Section 304-B of the Indian Penal Code. Section-304-B pertains to a dowry death

and it has two ingredients namely, a) death occurs otherwise than under normal circumstances within 7 years of the marriage and b) it is shown that soon before the death the wife was subjected to cruelty by her husband or any relative of her husband for, or in connection with any demand for dowry. Section 113-B of the Indian Evidence Act,1872 states that when the question is whether a person has committed a dowry death of a woman and it is shown that soon before her death such woman was subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the Court shall presume that such person had caused the dowry death and the term (dowry death) shall have the same meaning under Section-304-B of the Indian Penal Code.

. In the instant case, even as per the prosecution, after the marriage of accused No.1 to the deceased on 5.6.1995, even within two months of time, the parents of the deceased had hired a separate residential accommodation for the accused and the deceased and in the said house no other family members of the accused No.1 were staying. The rented house was at a distance of 100 to 150-mtrs. from the parental house of the accused No.1. It has come in the evidence of P.W.No.1 Dwarkanath Patil,

the father of the deceased that on 22.11.1995 both accused No.1 and the deceased stayed in his house and when they left on 23.11.1995 in the night, he had advised the accused No.1 not to harass or ill-treat the deceased and the accused had purportedly accepted his advice. Vaishnavi was found to be dead on 24.11.1995 and in the evidence of P.W.No.1 Dwarkanath Patil, P.W.No.2 Hansabai Patil and P.W.No.3-Anil Mhatre, it is nowhere stated before the Trial Court that prior to 22.11.1995 on any particular date the accused No.1 had assaulted or harassed the deceased in connection with alleged demand for money for the marriage of accused No.4-the sister of accused No.1.As per P.W.No.2 Hansabai, the accused No.1 did not like Vaishnavi going to Ghansoli every day to run the beauty parlour and therefore, accused started to harass her and beat her. Whereas, as per P.W.No.1 Dwarkanath Patil,Vaishnavi was complaining to him about the beatings given to her by accused No.1 and the harassment to her by the accused Nos. 2 and 3 by abusing in connection with demand of Rs.20,000/- for the marriage of accused No.4. This is too general a statement and such sweaping statement is not sufficient for a charge punishable under Section-304-B of the Indian Penal Code. Unless such instances were pointed out to have taken place on

specific dates and these dates were soon before 24.11.1995. The marriage of the couple was lasted for about 5 months and within a period of two months from the marriage, the parents of the deceased had made separate arrangement for the accused No.1 and the deceased to reside and the deceased was helped in setting up a beauty parlour of her own at Ghansoli about 20 to 22 K.M. away from the place where she was residing in Karave Village along with Accused No.1. At the same time, when P.W.No.3 Anil lodged the A.D. report on 24.11.1995, he did not suspect the involvement of any one in the death of Vaishnavi and this statement clearly indicated that there was no acquisition against the Accused No.1 or any other accused.

. We have also noted that the accused No.1 had taken a plea of alibi and in support of the same, he had examined D.W.No.1 Ramesh Bhoir. Though the name of D.W.No.1 was not furnished in the list of witnesses and the court summons were not issued to him to appear as a witness, the fact remains that the Trial Court examined him as the defence witness and having done so, it was necessary for the Trial Court to give reasons to discard the testimony of this defence witness. However, we find no reason leave

alone satisfactory reasons in discarding the evidence of D.W.No.1 Ramesh Bhoir. D.W.No.1 stated in his deposition that he was a neighbour of the accused No.1 and his house was visible from the house of the accused. The relations between the husband and the wife i.e. the accused No.1 and the deceased were cordial and they had returned from the house of the complainant late in the night on 23.11.1995. On 24.11.1995 at about 4.00a.m. the accused No.1 went to him and together they went for fishing. They returned at about 9.30a.m. and the accused went to his house and the witness to his own house in the neighbourhood. He had seen that the accused No.1 was knocking the door of his house (door of the inner room), the window was closed from inside and he knocked the window as well but there was no response. The neighbours gathered and some of them advised the accused No.1 to call the parents of Vaishnavi and accordingly, the accused No.1 made a telephone call to Vaishnavi's parents. After some time, P.W.No.3 Anil arrived and he also knocked the door but there was no response. Anil went towards the window and tried to open the same but it was closed from inside. In his cross examination there was nothing to weaken these statements made by him. Admittedly, this witness did not make any statement to the police

during the investigation and in his statement recorded under Section-313 of the Code of Criminal Procedure, the accused No.1 had stated that he would file a defence statement which he did not do. But there ought to be some reasons in discarding the testimony of D.W.No.1 Ramesh Mhatre. We find no reasons in this regard and therefore, it cannot be brushed aside that the accused No.1 proved that he was not in his house from 4.00a.m. to 9.30a.m. on 24.11.1995. It has also come in the evidence of P.W.No.3 Anil that the accused No.1 was waiting outside his house when he arrived at the scene and both of them broke open the door of the inner room where Vaishnavi was seen hanging. The accused No.1 was available at the spot when the incident had taken place. He did not run away nor did he remain absent and there was no evidence coming out from any of the neighbours that on the night of 23.11.1995 when the couple had arrived in their house, there was any incidence of violence or beating her as noticed by them in the house of the accused No.1. There is no witness stating that he/she had heard cries or shouts given by the deceased in the night on 23.11.1995 or in the early hours of 24.11.1995. We therefore, rule out the involvement of the accused No.1 in an offence punishable under Section-304-B of the Indian Penal

Code as there is no evidence in that regard placed before the Trial Court by the prosecution.

8. Regarding the charge under Section-498A of the Indian Penal Code, against all the accused, we did not find any evidence and therefore, we do not agree with the findings recorded by the Trial Court in that regard. We have also held that the charge against the accused No.1 for an offence under Section-498A could not be established by the evidence placed before the Trial Court by the prosecution. As far as other accused are concerned, as noted earlier within about two months of marriage, the accused No.1 has started staying separately alongwith his wife, from the remaining accused. The evidence of P.W.No.1,P.W.No.2 and P.W.No.3 does not in any way make out a case against any of the remaining accused i.e. accused Nos. 2 to 4 of an act punishable under Section 498A read with 34 of the Indian Penal Code. P.W.No.1 Dwarkanath Patil had stated before the Trial Court that the accused No.1 had asked Vaishnavi to bring Rs.50,000/- for the marriage of his sister, whereas, P.W.No.3 Anil stated that Rs.20,000/- were demand by the accused No.1 and since the demand was not complied, all the accused were beating Vaishnavi. This evidence of P.W.Nos. 1 and 3 was contradicted

by the evidence of P.W.No.2 Hansabai who had stated that the accused No.1 did not like Vaishnavi going to Ghansoli every day to run Beauty Parlour and therefore, accused No.1 had started beating and harassed her. The allegations made by all the witnesses before the Trial Court were vague allegations and in the earlier report filed by P.W.No.3 Anil at Exh.34 with the Nerul Police Station did not raise any whisper about any such incident and for the first time P.W.No.1 filed complaint belatedly on 25.11.1995 in which he set out such allegations. We therefore, do not agree with the findings of the Trial Court that the evidence led by the prosecution before it proved the charge of causing ill-treatment to the deceased by the accused Nos. 2 to 4 or any one of them.

9. In the premises, the order of conviction and sentence challenged in this appeal is unsustainable and therefore, the appeal succeeds. The appeal is hereby allowed and it is held that the prosecution failed to prove the charge under Section-302, and under Section 498A of the Indian Penal Code against the accused No.1. At the same time, the prosecution failed to prove the charge under Section-498A against the accused Nos. 2 to 4. The order of conviction

and sentence is therefore, quashed and set aside. The bail bonds furnished by the accused Nos. 2 to 4 shall stand cancelled and the fine amount, if any, paid be refunded. The appellant/accused No.1-Dnyaneshwar Sakharam Bhoir be released forthwith.

(R.S. MOHITE, J.) **(B.H. MARLAPALLE, J.)**

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CORAM: B.H.MARLAPALLE &
R.S. MOHITE, JJ.
DATED :12TH FEBRUARY, 2007

P.C.

. For the reasons separately recorded in the oral Judgment, the order of conviction and sentence challenged in this appeal is unsuccessful and therefore, appeal succeeds. Appeal is hereby allowed and it is held that the prosecution failed to prove the charge under Section-302, and under Section 498A of the Indian Penal Code against the accused No.1. At the same time, the prosecution failed to prove the charge under Section-498A against the accused Nos. 2 to 4. The order of conviction and sentence is therefore, quashed and set aside. The bail bonds furnished by the accused Nos. 2 to 4 shall stand cancelled and the fine amount, if any, paid be refunded. The appellant/accused No.1-Dnyaneshwar Sakharam Bhoir be released forthwith.

(R.S. MOHITE, J.) **(B.H. MARLAPALLE, J.)**

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